

ISSUED: September 6, 2002

D.T.E. 02-35

Petition of Connecticut Light and Power Company for findings pertaining to the status of Seabrook Nuclear Power Station under § 32(c) of the Public Utility Holding Company Act of 1935.

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I. INTRODUCTION

On May 17, 2002, Connecticut Light and Power Company (“CL&P”) filed a petition with the Department of Telecommunications and Energy (“Department”), in connection with CL&P’s plan to sell its interest in the Seabrook Nuclear Power Station (“Seabrook”), located in Seabrook, New Hampshire, to FPL Energy Seabrook, LLC (“FPLE Seabrook”). CL&P seeks findings concerning the treatment of the divested assets as eligible facilities so that FPLE Seabrook may apply to the Federal Energy Regulatory Commission (“FERC”) for exempt wholesale generator (“EWG”) status under § 32(c) of the Public Utility Holding Company Act of 1935, codified as 15 U.S.C. § 79z-5a (“PUHCA”). The Department docketed this matter as D.T.E. 02-35.

Pursuant to notice duly issued, the Department held a public hearing on June 12, 2002. The Attorney General of the Commonwealth of Massachusetts (“Attorney General”) filed a notice of intervention as of right pursuant to G.L. c. 12, § 11E. FPLE Seabrook was permitted to intervene as a full party. The Department granted limited participant status to J.P. Morgan Securities, Inc. (“J.P. Morgan”). Because the petitions of New England Power Company (“NEP”) in D.T.E. 02-33¹ and of Canal Electric Company (“Canal”), Cambridge Electric Light Company (“Cambridge”), and Commonwealth Electric Company

¹ The Department approved NEP’s petition for approval of the sale of NEP’s interest in Seabrook to FPLE Seabrook and for findings by the Department regarding the treatment of the Seabrook assets as eligible facilities under § 32(c) of PUHCA. New England Power Company, D.T.E. 02-33 (2002).

(“Commonwealth”) (collectively, “NSTAR Companies”) in D.T.E. 02-34² have issues and facts in common with CL&P’s petition in D.T.E. 02-35, pertaining to findings under PUHCA, the Department consolidated the evidentiary hearings in all three proceedings for administrative efficiency. The dockets themselves were not consolidated, and the Department issued separate orders in these companion dockets.

The Department conducted a consolidated evidentiary hearing on July 1, 2002.³ In support of its petition, CL&P sponsored the testimony of Donald M. Bishop, manager of regulatory policy-Massachusetts for Northeast Utilities Service Company. CL&P, FPLE Seabrook, and the Attorney General filed initial briefs on July 31, 2002. On August 5, 2002, FPLE Seabrook filed a reply brief, and CL&P filed a letter indicating its adoption of positions argued by NEP and the NSTAR Companies in both D.T.E. 02-33 and

² The Department approved the NSTAR Companies’ petition for approval of the sale of Canal’s interest in Seabrook to FPLE Seabrook, for approval to terminate the purchased power agreement between Canal, Cambridge, and Commonwealth, and for findings by the Department regarding the treatment of the Seabrook assets as eligible facilities under § 32(c) of PUHCA. Canal electric Company, Cambridge Electric Light Company, Commonwealth Electric Company, D.T.E. 02-34 (2002).

³ In support of its petition in D.T.E. 02-33, NEP sponsored the testimony of Terry L. Schwennesen, vice-president and director of generation investments for NEP. In support of their petition in D.T.E. 02-34, the NSTAR Companies sponsored the testimony of Robert H. Martin, director of electric energy supply, asset divestiture, and outsourcing for NSTAR Electric and Gas Corporation. NEP and the NSTAR Companies also co-sponsored the testimony of Paul M. Dabbar, vice-president of the natural resources group of J.P. Morgan, the company selected as the Seabrook auction agent. The testimony of these witnesses in the July 1, 2002 consolidated evidentiary hearing is part of the record in D.T.E. 02-35.

D.T.E. 02-34 (CL&P Reply Letter, citing NEP/NSTAR Companies Joint Reply Brief at 4-5, D.T.E. 02-33 and D.T.E. 02-34). The evidentiary record contains 18 exhibits.⁴

II. DESCRIPTION OF THE TRANSACTION

A majority of the joint owners of Seabrook have entered into a purchase and sale agreement (“PSA”) to sell to FPLE Seabrook their ownership interests totaling 88.23 percent of the Seabrook assets; the non-selling owners will retain their minority ownership interests.⁵ CL&P requests findings from the Department that the treatment of the Seabrook assets as “eligible facilities” pursuant to PUHCA benefits consumers, is in the public interest, and does not violate State law (CL&P Petition at 5; Exh. CL&P-1, at 2-3). CL&P states that such findings will enable FPLE Seabrook to operate Seabrook as an EWG, exempt from regulation as a public utility under PUHCA (Exh. CL&P-1, at 3). CL&P argues that without EWG status, the Seabrook assets would be “virtually unmarketable,” and that EWG status is a closing condition of the sale to FPLE Seabrook (id.).

CL&P is a wholly-owned operating company subsidiary of Northeast Utilities, a registered holding company under PUHCA. CL&P provides retail service in Connecticut and has no customers in Massachusetts (Tr. 1, at 98-99). CL&P states that it must seek findings

⁴ Although the documents were entered into evidence in the three dockets separately, the Department allowed documents from D.T.E. 02-33 and D.T.E. 02-34 to be incorporated in the instant proceeding by reference (Tr. 1, at 205).

⁵ The selling owners’ interests in Seabrook are as follows: North Atlantic Energy Corporation, 35.98201 percent; CL&P, 4.05985 percent; United Illuminating Company, 17.50000 percent; Great Bay Power Corporation, 12.13240 percent; Little Bay Power Corporation, 2.89989 percent; NEP, 9.95766 percent; Canal, 3.52317 percent; and New Hampshire Electric Cooperative, 2.17391 percent (Exh. NSTAR-2, at 5).

from the Department pursuant to PUHCA because its retail affiliate, Western Massachusetts Electric Company (“WMECo”) is subject to the Department’s jurisdiction (Exh. CL&P-1, at 2; Tr. 113-14). CL&P further states that PUHCA requires findings pertaining to eligible facilities from every state commission “having jurisdiction over the retail rates and charges of the affiliates of such registered holding company” (CL&P Initial Brief at 5, citing 15 U.S.C. § 79z-5a(c)(A)).

CL&P states that because it has no Massachusetts customers, the divestiture of CL&P’s interest in Seabrook will not affect Massachusetts customers’ rates (Tr. 1, at 98-99). CL&P claims that without eligible facility findings, the Seabrook assets would be “virtually unmarketable” (Exh. CL&P-1, at 2). CL&P argues, that the treatment of Seabrook as eligible facilities under PUHCA will benefit Massachusetts consumers by allowing the sale of Seabrook to go forward according to the terms of the PSA, and Massachusetts customers would receive the benefits of the sale that NEP and the NSTAR Companies claim in D.T.E. 02-33 and D.T.E. 02-34 (Tr. 1, at 113-15). CL&P claims that these benefits include an approximate \$50 million savings for NEP and \$6.1 million savings for the NSTAR Companies, resulting from a control premium paid for the 88.23 percent majority interest that FPLE Seabrook will acquire (CL&P Reply Letter, att. 1, at 4).

CL&P argues that consumers will benefit from the sale because additional generating capacity will be available for sale in the competitive market (CL&P Initial Brief at 6). CL&P further argues that designation of the facilities as eligible facilities is in the public interest because it furthers the goal of eliminating vertical integration of the electric utility industry and

is consistent with the Electric Industry Restructuring Act. Acts of 1997, c. 164 (“Restructuring Act”).

III. ANALYSIS AND FINDINGS

Section 32 of PUHCA defines an EWG to be a person “exclusively in the business of owning or operating, or both owning and operating, all or part of one or more eligible facilities and selling electric energy at wholesale.” 15 U.S.C. § 79z-5a(a)(1). An eligible facility is one “used for the generation of electric energy exclusively for sale at wholesale.”

15 U.S.C. § 79z-5a(a)(2). With respect to a facility already under construction or operating on the date of the enactment of § 32 and already covered in state rates or charges for electric energy sold directly to customers, specific findings from the Department are required before such facility may become an eligible facility. These required findings are “that allowing such facility to be an eligible facility (1) will benefit consumers, (2) is in the public interest, and (3) does not violate State law” 15 U.S.C. § 79z-5a(c).

Although CL&P does not serve retail customers in Massachusetts, designation of Seabrook as an eligible facility benefits Massachusetts consumers because eligible facility treatment for Seabrook and EWG status for FPLE Seabrook are conditions precedent to closing the sale. The Department finds that the sale creates two types of benefits to Massachusetts consumers. First, the customers of the retail affiliates of NEP⁶ and Canal⁷ receive direct economic benefits due to mitigation of transition costs once the sale of Seabrook is completed.

⁶ NEP’s Massachusetts retail affiliate is Massachusetts Electric Company.

⁷ Canal’s retail affiliates are Cambridge and Commonwealth.

See New England Power Company, D.T.E. 02-33, at 20 (2002); Canal Electric Company, Cambridge Electric Light Company, Commonwealth Electric Company, D.T.E. 02-34, at 23-24 (2002). Second, permitting the sale to close will benefit Massachusetts consumers because the sellers' Seabrook generation output will be released from the current long term contracts and made available to the competitive wholesale market in the New England region. Therefore, treating Seabrook as an eligible facility will benefit Massachusetts consumers.

Further, we have found that NEP and the NSTAR Companies demonstrated that eligible facility status is consistent with their restructuring plan or settlement and the Restructuring Act, and that treating Seabrook as an eligible facility is in the public interest. D.T.E. 02-33, at 20; D.T.E. 02-34, at 24. Finally, we have found that treating the divested Seabrook assets as an eligible facility does not violate state law, if the sales of the interests of NEP and the NSTAR Companies close consistent with the terms of the purchase and sale agreement and consistent with the Department's findings in D.T.E. 02-33 and D.T.E. 02-34. D.T.E. 02-33, at 15-18, 20; D.T.E. 02-34, at 15-18, 24; see generally G.L. c 164.

VI. ORDER

Accordingly, after due notice, hearing, and consideration, it is

ORDERED: That the Petition of Connecticut Light & Power Company for findings that the treatment of the Seabrook assets as “eligible facilities” pursuant to the Public Utilities Holding Company Act will benefit consumers, is in the public interest, and does not violate State law is APPROVED consistent with the findings and directives contained in this Order, as well as in New England Power Company, D.T.E. 02-33 (2002) and in Canal Electric Company, Cambridge Electric Light Company, Commonwealth Electric Company, D.T.E. 02-34 (2002).

By Order of the Department,

_____/s_____
Paul B. Vasington, Chairman

_____/s_____
James Connelly, Commissioner

_____/s_____
W. Robert Keating, Commissioner

_____/s_____
Eugene J. Sullivan, Jr., Commissioner

_____/s_____
Deirdre K. Manning, Commissioner

Appeal as to matters of law from any final decision, order or ruling of the Commission may be taken to the Supreme Judicial Court by an aggrieved party in interest by the filing of a written petition praying that the Order of the Commission be modified or set aside in whole or in part.

Such petition for appeal shall be filed with the Secretary of the Commission within twenty days after the date of service of the decision, order or ruling of the Commission, or within such further time as the Commission may allow upon request filed prior to the expiration of twenty days after the date of service of said decision, order or ruling. Within ten days after such petition has been filed, the appealing party shall enter the appeal in the Supreme Judicial Court sitting in Suffolk County by filing a copy thereof with the Clerk of said Court. (Sec. 5, Chapter 25, G.L. Ter. Ed., as most recently amended by Chapter 485 of the Acts of 1971).